

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 693 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and sd/-
MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

CHOBELAL RAMKISHAN

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for Petitioner
Mr.B.D.Desai,Addl.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE M.C.PATEL

Date of decision: 19/01/98

ORAL JUDGEMENT

Original accused in Sessions Case No.24 of 1988 has filed this appeal against the judgment and order of conviction under section 302 of the Indian Penal Code, dated 30.9.1989, by which the learned Additional Sessions Judge, Valsad at Navsari awarded sentence of rigorous

imprisonment for life to him.

Few facts of the prosecution-case to appreciate the contentions raised by the learned Advocate for the appellant and answered by the learned Addl. Public Prosecutor, Mr.B.D.Desai, are as under:-

Appellant (hereinafter referred to as "accused") and deceased Ramlottan alias Sitaram Chedilal Dhobi, were initially working in the shop of one Shankarlal as washermen, in particular doing work of pressing clothes. Thereafter, deceased Ramlottan started his own table to press the clothes, where accused then joined him. But as they were not able to carry on with sufficient income, accused was advised to have his table for pressing clothes at Umarsadi. Accused then started pressing of clothes there. The said table for pressing clothes was provided by the deceased. As there was some quarrel between the two about salary of accused to be paid by the deceased, it was decided between the two that accused should return back the table provided by the deceased. Accused had started his pressing work at Umarsadi from where he was required to bring back the said table. On 9.12.1987 or thereabout, accused and deceased had proceeded towards Umarsadi from Palsana to fetch that table. On their way back from Umarsadi when they were to cross a bridge over railway culvert No.306, there was some quarrel between the two and accused gave push to the deceased who fell down from that bridge and died. Prosecution has alleged that on fall of the deceased from the bridge, accused strangulated the deceased by muffler on his neck. Accused then ran away and approached one Ramlal, who in his turn informed Birendra (P.W.29), who in his turn informed Shankarlal, who again in his turn informed Kallulal. On hearing the story, Kallulal decided to hand over the accused to the police, if the story is found to be true. However, on the next day, accused ran away. When the employee (keyman) of the railway, Radkabhai Govanbhai (P.W.11), who looked after the track, reached near the bridge of that culvert, he found dead body of a person. He, therefore, informed the Station Master of Pardi about the same. Station Master then sent a memo to policemen and the first information came to be registered.

On offence being registered, investigation was carried out, and on completion of the same, charge-sheet

was submitted against the accused in the Court of Judicial Magistrate, First Class at Pardi, who in his turn committed the case to the Court of Sessions.

Learned Addl. Sessions Judge framed charge against the accused to which the accused pleaded not guilty. Prosecution led necessary evidence. Defence had not led any evidence. The learned Addl. Sessions Judge, after hearing the parties, held accused guilty of the offence punishable under section 302 of the Indian Penal Code and awarded sentence of rigorous imprisonment for life.

This judgment and order of conviction is challenged by the learned Advocate Mr. P.M.Vyas on the grounds, namely, that the order of conviction is not warranted by evidence on record. That the alleged extra-judicial confession is not a confession or an admission of commission of an offence by the accused. Mr.Vyas contended that at the most the said confession can be read to hold that accused gave push to the deceased, who fell down from the culvert and has died because of the fall and not due to the push given by the accused. There is no direct evidence of the fact that accused gave a push and the deceased fell down from the bridge over the culvert. He, therefore, contended that the conviction is not warranted by any evidence on record.

In reply to the same, Mr.B.D.Desai, learned Addl. Public Prosecutor, contended that there is a strong circumstance of accused being seen in company of the deceased last and fact of deceased being found dead, more particularly because of strangulation, would lead to an inference that it is the accused who has killed the deceased. Mr.Desai further contended that the prosecution is able to establish the motive to commit such act. Mr.Desai further contended that extra-judicial confession before P.W.29, P.W.30 and P.W.31 is sufficient and strong evidence to hold the accused guilty and the judgment and order of the learned Addl. Sessions Judge does not call for any interference.

It will be relevant to refer to the evidence of the doctor who has performed autopsy on the dead body of the deceased. There are as many as six external injuries on the person of the deceased. Injury No.6 is a ligature

on the neck. Injuries Nos.1 to 5 are as under:-

- "(1) C.L.W.1 1/4" x 1/4" x 1/4" vertex
Rt. eye-lid (upper) & eye on Rt.
fore head.
- (2) Abrasion on Rt. palm.
- (3) Profused swelling on Rt.
- (4) Bruise & Abrasion on Chest at liver region.
- (5) Abrasions on both legs lateran side from
thigh ankles.
- (6) Swelling around the neck."

From the evidence of Dr. Birendra Ramanand Pande (P.W.3), it is clear that injuries Nos.1,3 and 4 can be caused by hard and blunt substance. Injury No.2 can be caused by a contact with hard and blunt substance. Injury No.5 can be caused by a substance having thicket of thorns. Injury No.6 can be caused by soft ligature. According to the doctor, post-mortem was commenced at 9.00 a.m. on 11.12.1987. Said injuries, according to the doctor, are about 30 hours old and they are all found to be homicidal. Doctor has also found internal injuries. On the chest bone, the following injury is found:-

"Fracture of 8th rib (Rt.side) anterior end.

There was blood dot under the skin of the surface injury No.4. There was closed blood also under the 8th Rt.rib cartilage."

According to the doctor, this internal injury was corresponding to external injury No.4. In the cross-examination, the doctor has admitted that injuries, except injury No.6 mentioned in column No.17, can be caused by a fall. Doctor has denied that man may not die by a simple ligature injury. Thus, from the evidence of the doctor, it is clear that the deceased has died a homicidal death.

Short question for our consideration would be whether these injuries on the person of the deceased are

caused by the accused intentionally or whether these injuries are accidental, not co-relating with any of the acts of the accused.

Admittedly, in this case, there is no direct evidence to show that it is the accused who has caused injuries on the person of the deceased. However, the prosecution has relied on the circumstances to lead to an inference that it is the accused alone who has caused injuries on the person of the deceased and/or who has strangulated the deceased, as a result of which he died. We need not detain ourselves for the evidence as to how accused and deceased came in village Palsana and what were they doing. We may commence our discussion from the stage when accused and deceased went to Umarsadi to fetch the table and on the way back, the incident took place. It is the case of the prosecution that when the accused and deceased were coming back from Umarsadi and reached on the bridge over the culvert No.306, accused gave push to the deceased, who fell down from the bridge and died. Therefore, it is the accused who has killed the deceased. To substantiate this, in our opinion, relevant evidence is of Ramlal Jagdeva (P.W.28), Birendra Ramlal (P.W.29), Subelal Munilal (P.W.30) and Kallulal Ram Dhulare (P.W.31).

P.W.28 is declared hostile. P.W.28 is not an eye-witness. As the police-jeep had gone in search of accused at the shop of this witness, he had run away to Bombay in search of the accused. He could trace accused near Seven Roads near Mahalaxmi. He then came to Vapi and made the accused surrender to police. In his substantive evidence, he has said nothing except this. After declaring him hostile, an attempt was made to prove certain facts stated by him before police. However, he has denied the same. As we treat those facts to be otherwise relevant and required to be considered, we state those denied facts herein.

Ramlal Jagdeva (P.W.28) has stated that it has not happened and he has not so stated before the police that "on inquiring from Chobelal, he told me.....you return me that, then I may return your iron and money found due.....on giving push, he fell down from the bridge.....I therefore went near him. By fall from above.....by putting knot by force, I then ran away." By this alleged statement before the police, prosecution wanted to suggest that accused has admitted before Ramlal

(P.W.28) to the effect that he gave push to the deceased on the bridge wherefrom deceased fell down and accused went near the deceased and tied a knot with force. This part of the evidence is not there in substantive evidence.

On coming back from Bombay, accused surrendered before the Police.

Birendra (P.W.29) has deposed to the effect that Chobelal told him that when they were going to Umarsadi from Palsana, Ramlottan assaulted him. Chobelal further told him that when they reached on the bridge, he gave push and he then ran away. Thereafter Shankar came to him to whom he talked all this. Shankar waited for Chobelal and on arrival of Chobelal (accused), Shankar took him to Snehpark and the witness also accompanied them. When Chobelal had come back to his shop, Shankar asked him and Chobelal replied what he had told the witness.....Shankar having been annoyed, gave a strike of baton on the fore-head of Chobelal. He was also given two/three slaps.

In the cross-examination, this witness has admitted that he has stated before the police that Chobelal gave push to Ramlottan from the bridge and killed him, but police might not have recorded it. He has also denied it to be not true that he has not stated before the police that Chobelal told him that he has killed Ramlottan.

Another witness, Subelal Munilal (P.W.30) is an employee of one Kallulal (P.W.31). Kallulal (P.W.31) has stated that Shankarlal had taken Chobelal to the shop of Kallulal. Kallulal was informed by Shankar that Chobelal stated that he has thrown off Ramlottan from railway bridge by pushing him, and on inquiry by Kallulal from Chobelal, Chobelal admitted it to be true. This was also heard by Subelal (P.W.30).

Taking evidence of all these witnesses (P.W.28, P.W.29, P.W.30 and P.W.31), as it stands, it only reveals and proves that while accused and deceased were on the bridge, something went wrong between the two and accused gave push to the deceased and the deceased fell down from the bridge. From the evidence of these four

witnesses, it is not proved or established that it was accused who has strangulated the deceased. When the deceased was found dead by the railway employee (P.W.11), there was a muffler on the person of the deceased. From the evidence of Pravinbhai (P.W.5), a Panch of the inquest-report, it is clear that there was a muffler on the neck of the deceased which had one knot. There is nothing on record to show as to who tied that knot of muffler on the neck of the deceased. There is no dispute on the fact that the deceased had a muffler on his neck at the relevant time. In absence of any evidence that the knot on the muffler was put by the accused, it cannot be inferred that it was the accused who had tied the knot. The doctor (P.W.3) has admitted that injuries Nos. 1 to 5 can be caused by a fall from the bridge. In view of this statement, it can be said that injury No.6 can also be caused by the fall. So far as the strangulation is concerned, if a person had a muffler on his neck and falls from a height of about 20 feet or so in a place where there are bushes, then the possibility of ligature mark on the neck by such a fall due to entangling of the muffler with some of the thorns or branches of some of the bushes cannot be ruled out. It is an established principle of criminal law that chain of circumstances must be so established that it must be consistent with the hypothesis of guilt of the accused. Any alternative suggestion will weaken the inference of guilt from the circumstances and the benefit thereof should go to the accused. In the instant case, only evidence which the prosecution is able to procure is that the accused gave push to the deceased. Rest is left by the prosecution to be inferred by the Court. But when the other inference is also possible and probable, the one in favour of the accused is to be accepted.

Mr. Desai, learned Addl. Public Prosecutor, contended before us that it is the accused who has to explain these circumstances, as there is a strong circumstance against the accused of his being found last in the company of the deceased. No doubt, it is a strong circumstance, but by itself, in absence of any other sufficient material, cannot lead us to infer that it is the accused who has killed the deceased, when other probability of his accidental death by a fall in the bushes and the strangulation by an accidental act is not ruled out. The chain of circumstances must be complete and must lead to a hypothesis of guilt, and in the absence of chain of circumstances in the instant case, the guilt of the accused alone cannot be inferred. Prosecution has examined as many as 33 witnesses, including 2

investigating officers, but relevant witnesses are, in our opinion, only four before whom, it is alleged by the prosecution, that there is an extra-judicial confession. Those witnesses are P.W.28, P.W.29, P.W.30 and P.W.31. However, as discussed above, the evidence of these witnesses also does not lead to an inference of the guilt alone of the accused.

The learned Addl. Public Prosecutor has contended before us that there is a motive established by the prosecution. In our opinion, motive alone by itself is not a circumstance to hold the accused guilty. Motive also must be sufficient one. If the accused had a motive to kill the deceased on the basis of an alleged quarrel between the two about the payment, then they would not have travelled together from Palsana to Uamarsadi and back. Dispute between the two was a petty dispute as one can say, which may not be a cause for killing a person. Even if we accept the evidence of P.W.28, P.W.29, P.W.30 and P.W.31, then what accused has said is that he gave push to the deceased and nothing more. Accused stated to the witnesses that he killed the deceased is his own inference as he gave a push, as a result of which the deceased fell and died. Accused takes over the responsibility for the death of the deceased by his push and thereby he admits that it is he who has killed the deceased.

In view of the above discussion, the appeal is liable to be allowed and the judgment and order of the learned Additional Sessions Judge is required to be quashed and set aside. Accordingly, the appeal is allowed and the judgment and order of the learned Additional Sessions Judge, Valsad at Navsari, in Sessions Case No.24/88, dated 30-9-1989, is set aside. The appellant-accused is acquitted of the offence punishable under section 302 of the Indian Penal Code by giving him benefit of doubt. The appellant-accused be set at liberty forthwith, if not required in any other case.
